

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONAS ROBERTS,	:	
	:	
Plaintiff,	:	No. 4:08-CV-01853
	:	
v.	:	(Judge McClure)
	:	
DR. ZALOGA, et. al.	:	(Magistrate Judge Smyser)
	:	
Defendants.	:	

O R D E R

August 28, 2009

BACKGROUND:

On October 8, 2008, plaintiff Jonas Roberts, a state prisoner residing at the Lackawanna County Prison (“LCP”), proceeding pro se, commenced this action by filing a complaint under 42 U.S.C. § 1983. (Rec. Doc. No. 1). Defendants are Dr. Zaloga, a physician at LCP; Ms. Donate, the Warden of LCP; Mr. Betti, the Assistant Warden at LCP; Mr. Chiarelli, a captain; Mr. Maloney, a lieutenant at LCP; and Mr. Thompson, a counselor at LCP. Plaintiff asserts that his federally protected rights have been violated by prison officials.

The matter was referred to United States Magistrate Judge J. Andrew Smyser. All defendants have filed an answer to the complaint, with the exception

of Dr. Zaloga, who filed a motion to dismiss the complaint along with a supporting brief. (Rec. Doc. Nos. 19 and 21). The claim against Dr. Zaloga is an Eighth Amendment claim. Plaintiff asserts Dr. Zaloga was deliberately indifferent to the serious medical needs of plaintiff. Plaintiff was granted an extension of time within which to file his opposing brief. (Rec. Doc. No. 29) Although plaintiff's brief was not timely filed, we accepted it as timely. (Rec. Doc. No. 30). Defendant has not filed a responsive brief.

The magistrate judge filed an eight-page report and recommendation on May 20, 2009. (Rec. Doc. No. 46). The magistrate judge denied Dr. Zaloga's motion to dismiss. No objections have been filed to the report and recommendation. On the contrary, Dr. Zaloga filed an answer to the complaint on June 2, 2009. (Rec. Doc. No. 48). On June 30, 2009, we adopted the magistrate judge's report and recommendation. (Rec. Doc. No. 51).

The plaintiff, on August 3, 2009, filed a motion for voluntary dismissal. (Rec. Doc. No. 55). On August 4, 2009, pursuant to Fed. R. Civ. P. 41(a), a certificate of concurrence was filed by defendants Warden Donate, Assistant Warden Betti, Captain Chiarelli, Lieutenant Maloney, and Counselor Thompson. (Rec. Doc. No. 56). The magistrate judge issued a report and recommendation on August 6, 2009, in which he recommended dismissal pursuant to Fed. R. Civ. P.

41(a)(2). (Rec. Doc. No. 56). As noted by the magistrate judge, Fed. R. Civ. P. 41(a)(2) states that, other than “as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” On August 7, 2009, Dr. Zaloga, the only remaining defendant, filed a certificate of concurrence with the plaintiff’s motion for voluntary dismissal. (Rec. Doc. No. 58).

No objections have been filed to the plaintiff’s motion for voluntary dismissal; in fact, all defendants in this matter have filed certificates of concurrence. In addition, the magistrate judge has recommended that the plaintiff’s motion for voluntary dismissal be granted, as well as that the case be dismissed as to all defendants. Because we agree with the magistrate judge’s analysis that the action should be dismissed pursuant to Rule 41(a), and as there are no objections, we will adopt the magistrate judge’s report and recommendation in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. United States Magistrate Judge J. Andrew Smyser’s Report and Recommendation is adopted in full. (Rec. Doc. No. 57).
2. The complaint is voluntarily DISMISSED, without prejudice.

3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge